IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1902 OF 2007

1. Anita Kaur Kohli,)
Age: 49 years, Occ.Housewife,)
Address at 32, Dharmputra Pritam)
Estate, Dadar (East),Mumbai.)

2. Amardeep Singh Kohli,)
Age: 53 years, Occ.Business,)
having office at 32, Dharmputra)
Pritam Estate, Dadar(East),)
Mumbai.) ..APPLICANTS.

Versus

1. Brihan Mumbai Electricity)
Supply & Transport Undertaking)
having address at :-)
Best Bhavan, Best Marg,)
Colaba, Mumbai.)

2. The Senior Police Inspector,)
Matunga Police Station,)
Mumbai.)

3. The State of Maharashtra.) ..RESPONDENTS.

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Mr.Dinesh Shukla, Adv. i/b. Jagjeet Rehel, Adv. for the Applicants.

Mr.J.S.Saluja, Adv. for Respondent No.1.

Mr.M.S.Mhambre, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.
DATED : AUGUST 07, 2007.

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR,J.)

1. Heard. Rule. By consent, Rule is made

returnable forthwith.

2. The applicants challenge the FIR dated 7th January, 2003 which was lodged in FIR LAC No.22 of 2003 at Matunga Police Station. The allegations of commission of offence by the applicants under Sections 39 and 44(c) of the Indian Electricity Act, 1910, on the ground that in view of compounding of offence in terms of Section 152 of the Electricity Act, 2003 on payment of the dues, the respondents are neither entitled to pursue with the investigation nor to prosecute the applicants for the alleged offence.

3. Section 39 of the Indian Electricity Act, 1910 related to the offence of theft of energy and Section 44 of the said old Act related to penalty for interference with meters or licensee’s works and for improper use of energy.

4. The Indian Electricity Act, 1910 was repealed consequent to the Electricity Act, 2003 which came into force from 10th June, 2003.

Section 185 of the new Act i.e. the Electricity Act, 2003 deals with the subject of repeal and saving and sub-section 2(a) thereof reads thus :-

"**185. Repeal and saving:-**

(1) .....

(2) Notwithstanding such repeal,--

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall insofar

as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;"

5. Section 152 of the new Act i.e.the Electricity Act, 2003 reads thus :-

152. Compounding of offences.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below :-

TABLE

Nature of service	Rate at which the sum of money for compounding to be collected per Kilowatt(KW)/Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)
(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other services	four thousand rupees;

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any Criminal Court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

This clause provides for compounding of offences. It provides that Appropriate Government or any officer authorised by it may accept from any consumer or person who committed or is reasonably suspected of having committed an offence of theft of electricity, a sum of money by way of compounding of offence as specified in the table provided in this clause. Such compounding of offence shall be allowed only once for a consumer.(Notes on clauses).

6. Undisputedly the offence of theft of energy was alleged to have been committed on 7th January, 2003 when the old Act was in force.

However, applying the provisions of Section 185(2)(a) of the new Act (the Electricity Act, 2003) read with the provisions of Section 152 of the new Act, it is apparent that once an offence is compounded in exercise of powers under Section 152(1) of the new Act in relation to the offence committed prior to the enactment of new Act, the provisions of Section 152(2) of the new Act would be attracted. The said sub-section (2) of Section 152 clearly provides that on payment of the sum of money in accordance with sub-section (1) for compounding of the offence, no proceedings for the commission of any such theft shall be instituted nor shall be continued against the consumer. Being so, bearing in mind the provisions of Section 185(2)(a) of the new Act, and taking into consideration the provisions of law comprised under Section 152(2) of the new Act, it is apparent that the legislature has clearly provided that in comparison with the provisions in relation to the offences which were committed under the old Act, they are compoundable by the authority in exercise of powers under Section 152(1), in

which case, there cannot be any occasion for the authorities either to prosecute or even to continue with the prosecution already pending against the consumer in relation to the offence under the old Act. Hence, the petitioners are justified in contending that in the case in hand in view of letter dated 14th March, 2007 issued by the respondent the electricity authorities, the applicants cannot be subjected to prosecution for the alleged offence. Indeed the letter was to the effect that the petitioner having already paid necessary amount for compounding of offence, the provisions of Section 152(2) & (3) of the Electricity Act, 2003 are attracted and therefore there is no question of proceeding to prosecute the petitioners for the offence which is stated to have been committed under the old Act of 1910.

7. For the reasons stated above, the Application succeeds. The FIR LAC No.22 of 2003 dated 7th January, 2003 registered at Matunga Police Station is hereby quashed and the application is made absolute in terms of prayer

clause (b) with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]